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Filing date: **04/18/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91199109
Party	Defendant Calico Jack's LLC
Correspondence Address	CALICO JACKS LLC 19 AUTUMN LANE CARRIERE, MS 39426-7070 UNITED STATES calicoenergy@yahoo.com
Submission	Answer
Filer's Name	/Sidney J. Martin III/
Filer's e-mail	calicoenergy@yahoo.com
Signature	/Sidney J. Martin III/
Date	04/18/2011
Attachments	calico final word document pdf.pdf (17 pages)(430906 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

CALPICO CO., LTD.

Opposer,

VS.

CALICO JACK'S L.L.C.

Defendants,

OPPOSITION NO. 91199109

TRADEMARK NO. 85077274

DATE: 18 APRIL 2011

ANSWER

Count 1 Likelihood of confusion – Section 2(d) of the Lanham Act

1. Applicant's use of the CALICO design and mark is likely to cause confusion, or to cause mistake, or to deceive, in view of Opposer's long prior use of the arbitrary and distinctive CALPICO family of marks in association with the sale, distribution and advertising of identical and similar types of goods.

DENY

2. By reason of Opposer's use of the CALPICO family of marks from a date long prior to Applicant's use of its application to register, a confusingly similar trademark in connection with the same or related goods, Opposer has rights superior to any rights of applicant.

DENY

3. The registration of Applicant's CALICO design and mark on the Principal register will interfere with Opposer's enjoyment of its rights in its CALPICO family of marks, to the substantial detriment of Opposer, pursuant to Section 2(d) of the Lanham Act, 15 U.S.C. Section 1052 (d).

DENY

Count II Deception/ False Suggestion of Origin – Section 2 (a) of the Lanham Act

3. Applicant's CALICO design and mark so closely resembles Opposer's CALPICO Family of marks that it is likely to cause deception in violation of Section 2(a) of the Lanham Act, 15 U.S.C. Section 1052(a) in that Applicant's mark misdescribes the nature of origin of the goods, and this is likely to materially alter purchasers decision to acquire Applicant's goods.

DENY

5. Applicant's CALICO design and mark so closely resembles Opposer's CALPICO family of marks that it falsely suggests a connection with Opposer in violation of Section 2(a) of the Lanham Act, because Opposer's CALPICO family of marks points uniquely to Opposer and purchasers will assume that the goods sold under Applicant's CALICO design and mark are connected or affiliated with Opposer.

DENY

6. Applicant's registration of the CALICO design and mark will damage Opposer within the meaning of Section 2(a) of the Lanham Act, 15 U.S.C. Section 1052 (a).

DENY

Count III Fraud

7. Upon information and belief, Applicant fraudulently misrepresented that its CALICO design and mark was in use in commerce when it filed the '274 application under oath pursuant to Title 18 U.S.C. 1001. The specimen submitted by applicant to support its allegation of use is clearly fabricated – a paper label apparently taped or glued to a can—is obviously not a commercially used label, and thus is false.

DENY

8. Upon information and belief, the specimen relied on to support Applicant's alleged use indicates that the product on which it is used contains alcohol. However, Applicant's goods, as described in the '274 application do not contain alcohol. Thus, the specimen label submitted is false and was not actually used in connection with the goods in the application.

DENY

9. Upon information and belief, said false statement was made, and specimen submitted, by an authorized agent of Applicant with the knowledge and belief that such statement and specimen were false.

DENY

10. Upon information and belief, said false statement was made, and specimen submitted, with the intent to induce authorized agents of the United States Patent and Trademark Office to grant a registration on the '274 application to Applicant.

DENY

11. Upon information and belief, the United States Trademark Office relied on this false statement and specimen in approving the application for registration and but for these false statements, the application would not have been approved for publication.

DENY


12. For the forgoing reasons, Opposer will suffer considerable harm to its CALPICO family of marks if the '274 application is permitted to mature to registration.

DENY

WHEREFORE, Defendant submits a plea of denial for all 3 counts and to each individual accusation to each individual paragraph above and hereby states that the company CALICO JACK'S L.L.C., and marks "CALICO" along with "CALICO JACKS" trademarks or products of trade does not have anything to do with CALPICO or CALPICO's family of trademarks and denies any and all accusations.

DATE:18 APRIL 2011

Respectfully Submitted,
CALICO JACK'S LLC.

By: 
Sidney J. Martin III
19 Autumn Lane
Carrier, Ms. 39426
(504)355-9639 (tel)

CERTIFICATE OF SERVICE

I Hearby certify that on the 18th day of APRIL, 2011 a true copy of ANSWER to the NOTICE OF OPPOSITION was served on applicant via U.S. first class mail, postage prepaid to:

BAKER & HOSTETLER LLP
45 Rockefeller Plaza
New York, New York 10111
(212) 589-4200 (tel)

A handwritten signature in black ink, appearing to read "Sidney J. Martin III", written over a light blue rectangular background.

Sidney J. Martin III

EXHIBIT A



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Word Mark **CALICO**

Goods and Services IC 032. US 045 046 048. G & S: Energy drinks; Fruit drinks and fruit juices; Fruit flavored soft drinks; Fruit-based soft drinks flavored with tea; Guarana drinks; Isotonic drinks; Pop; Powders used in the preparation of isotonic sports drinks and sports beverages; Soft drinks; Sports drinks; Sports drinks, namely, energy drinks; Syrups for making soft drinks. FIRST USE: 20100120. FIRST USE IN COMMERCE: 20100120

Mark Drawing (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Code

Design 02.11.10 - Bones, human; Human skeletons, parts of skeletons, bones, skulls; Skulls, human
Search Code 23.01.01 - Epees; Foils; Rapiers; Sabers; Swords

Serial Number 85077274

Filing Date July 2, 2010

Current Filing Basis 1A

Original Filing Basis 1A

Published for Opposition November 23, 2010

Owner (APPLICANT) Calico Jack's llc. LIMITED LIABILITY COMPANY MISSISSIPPI 19 Autumn lane
carriere MISSISSIPPI 39426

Description of Mark Color is not claimed as a feature of the mark. The mark consists of a skull with two swords
crossed beneath and the words "Calico".

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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Typed Drawing

Word Mark CALPICO SODA

Goods and Services IC 032. US 045 046 048. G & S: soft drinks, fruit juices, [vegetable juice beverages].
FIRST USE: 19960300. FIRST USE IN COMMERCE: 19960300

Mark Drawing Code (1) TYPED DRAWING

Serial Number 78267041

Filing Date June 25, 2003

Current Filing Basis 1A

Original Filing Basis 1A

Published for Opposition May 25, 2004

Registration Number 2874702

Registration Date August 17, 2004

Owner (REGISTRANT) CALPIS CO., LTD. JOINT STOCK COMPANY JAPAN 4-1, Ebisu-Minami 2-chome, Shibuya-ku, Tokyo JAPAN

Attorney of Record David Toren

Prior Registrations 1000780;1774588

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SODA" APART FROM THE MARK AS SHOWN

Type of Mark TRADEMARK

Register PRINCIPAL

Affidavit Text SECT 15. SECT 8 (6-YR).

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Typed Drawing

Word Mark CALPICO WATER

Goods and Services IC 032. US 045 046 048. G & S: Soft drinks. FIRST USE: 19920400. FIRST USE IN COMMERCE: 19920400

Mark Drawing Code (1) TYPED DRAWING

Serial Number 78266179

Filing Date June 24, 2003

Current Filing Basis 1A

Original Filing Basis 1A

Published for Opposition July 20, 2004

Registration Number 2893343

Registration Date October 12, 2004

Owner (REGISTRANT) Calpis Co., Ltd. CORPORATION JAPAN 20-3, 2-chome, Ebisu-Nishi, Shibuya-ku Tokyo JAPAN

Attorney of Record Edmund J. Sease

Prior Registrations 1000780

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "WATER" APART FROM THE MARK AS SHOWN

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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Typed Drawing

Word Mark CALPICO

Goods and Services IC 032. US 045. G & S: CONCENTRATES FOR MAKING SOFT DRINKS

IC 029 032. US 046. G & S: FERMENTED MILK, FERMENTED MILK BEVERAGE, FRUIT JUICE [, YOGURT, CREAM AND BUTTER]

Mark Drawing Code (1) TYPED DRAWING

Serial Number 72386926

Filing Date March 22, 1971

Current Filing Basis 44E

Original Filing Basis 44E

Registration Number 1000780

Registration Date December 31, 1974

Owner (REGISTRANT) CALPIS FOOD INDUSTRY CO., LTD., THE CORPORATION JAPAN 20-3, 2-CHOME, EBISU-NISHI SHIBUYA-KU, TOKYO JAPAN

(LAST LISTED OWNER) CALPIS CO., LTD. CORPORATION JAPAN 4-1, 2-CHOME, EBISU-MINAMI, SHIBUYA-KU TOKYO JAPAN

Assignment Recorded ASSIGNMENT RECORDED

Attorney of Record ROBERT B.G. HOROWITZ, ESQ.

Type of Mark TRADEMARK

Register PRINCIPAL

Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20050222.

Renewal 3RD RENEWAL 20050222

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